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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/654,357 09/01/00 ZEMEL

M UTR-104

023557 HM12/0523
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EXAMINER

NGUYEN, H

ART UNIT

PAPER NUMBER

1617

DATE MAILED:

05/23/01

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/654,357

Applicant(s)

ZEMEL ET AL.

Examiner

Helen Nguyen

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 11-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6 & 7.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

Applicant's election without traverse of Group I, claims 1-17 and 21-34. In addition, Applicants election of methodology A, claims 1-10, wherein the metabolic change is the stimulation of lipolysis, and wherein the metabolic change is stimulated by foodstuffs supplemented with calcium, in Paper No. 8 is acknowledged.

Applicants have overlooked the election of species in claim 6. Applicants have not elected one ultimate specie drawn to a particular food containing calcium. However, the Examiner has considered claim 6 and withdrawn the election of species requirement in claim 6 as set forth in the restriction.

Therefore, claims 1-2 and 4-10 are presented for examination.

Claims 3 and 11-34 are non-elected.

Claim rejection

The following is a quotation of the **first paragraph of 35 U.S.C. 112**:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-2 and 4-10 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for calcium carbonate, does not reasonably provide enablement for any other calcium other than calcium carbonate. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. In the specification on page 12, last line and page 23, line 6, Applicants

only disclose calcium carbonate (CaCO_3), no other calcium or dietary calcium supplementary source is disclosed.

- ❖ The following is a quotation of the appropriate paragraphs of **35 U.S.C. 102** that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-2 and 4-10 are rejected under **35 U.S.C. 102(a)** as being anticipated by Carper (See IDS of March 19, 2001).

declaration
✓
Carper is not an inventor or author (interviewer)
Carper teaches milk is a new diet drink. Carper also teaches high-calcium dairy foods may burn off fat. Carper further teaches that extra calcium increased metabolism, burning off more calories and fat. See the entire document.

- ❖ The following is a quotation of the appropriate paragraphs of **35 U.S.C. 102** that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Or

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-2 and 4-10 are rejected under **35 U.S.C. 102(b) or (a)** as being anticipated by Zemel et al. (See IDS of April 20, 2001; AP). *Jan 2000*

declaration
✓
Zemel et al. suggest that dietary calcium increased lipolysis. Zemel et al. also teach increasing dietary calcium resulted in loss of body fat. See the entire document.

The Examiner requests the disclosure of the publication month and day of this reference (AP, IDS of April 20, 2001). The paragraph under which this rejection is made depends upon the publication date of this reference.

Claims 1-2 and 4-10 are rejected.

Claims 3 and 11-34 are non-elected.

The Examiner requests the disclosure of the publication month and day for the following references: AK, AL and AR (See IDS of April 20, 2001).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen Nguyen whose telephone number is (703) 605-1198. The examiner can normally be reached on M-F (9:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie can be reached on (703) 308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Helen Nguyen
Patent Examiner

May 22, 2001


EDWARD J. WEBMAN
PATENT EXAMINER
GROUP 15B

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Art Unit: 1617

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